

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0275

**Gross Income Tax
For Calendar Year 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the proposed penalty assessment for the late payment of its income tax. The due date of the return was April 15, 1998. Taxpayer filed its return late on October 15, 1998 with payment of approximately forty-seven percent (47%) of its tax liability. The Department issued its late payment assessment on July 30, 2001.

Taxpayer filed a tax and penalty protest letter dated September 27, 2001 that states that it would provide a written brief and supplemental documentation supporting the protest. On July 2, 2002 taxpayer submitted its written brief to protest the penalty only.

Taxpayer states that it executed the sale of one of its divisions in December 1997 and the full ramifications of the sale such as the amount of realized gain and the forgiveness of debt were not realized until the filing of the tax return, at which time the remaining amount of tax due was paid in full. Taxpayer states it relied upon the advice of its accountant and the amount of tax due when it filed for an extension was based on the advice it was given. Taxpayer prepared the Indiana return and submitted payment of the tax. A federal extension was filed on March 16, 1998.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer's representative, at hearing, states that prior to 1997 the taxpayer was not required to file estimated taxes, was near bankruptcy, and due to financial problems decided to sell one of its divisions. In December 1997 it entered into a preliminary agreement to sell the company which was not completed until December 31, 1997. The ramifications of the sale were not realized until the filing of the tax return. Taxpayer requests the penalty be waived and states that it complied with the Indiana State Revenue requirements, relied upon the advice of its accountant, and the amount of tax due when it filed for an extension was based upon the advice it was given.

Taxpayer did not make full payment by the original due date of the return. More than forty-seven percent (47%) of the tax due was paid after the due date of the return. An extension to file is not an extension for payment.

Taxpayer has not provided reasonable cause to allow the Department to waive the penalty.

FINDING

Taxpayer's protest is denied.